IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.1732 OF 2007
IN
CONTEMPT PETITION NO.84 OF 2007
IN
NOTICE OF MOTION NO.1880 OF 2002
IN
SUIT NO.2299 OF 2002

Madhuri Rameshchandra Khanna .. Petitioner
Versus
Umesh Chandra Khanna .. Respondent

Mr.R.D.Suvarna for petitioner
Mr.Doctor i/b.M.Humranwala for respondent

CORAM : S.C.DHARMADHIKARI, J.
DATE : 2nd November 2007.

P.C.

. The petitioner has prayed that the respondent be held guilty of contempt of this Court's order dated 16th April 2007. In the submission of petitioner, that order, a copy of which is annexed as Annexure "C" specifically directs that the petitioner and the respondent

would use the premises in question for residential purposes. The premises would not be used for any other purpose, is the statement made on behalf of respondent to this petition, which has been accepted.

2. The dispute is between close relatives viz., sister in law and brother in law.

3. The Court has recorded in its order the attempts made to amicably sort out the same. The order that is passed restrained the respondent from using the subject premises for any purpose other than residence. The allegations in the contempt petition are thus:-

> "7. The petitioner states that though the statement made on behalf of the respondent that the premises referred to in the plaint are used exclusively for residential purpose by the defendant and

his family members is absolutely false to his own knowledge inasmuch as the respondent was using the bedroom on the second floor as office and the respondent's wife was conducting coaching/tuition classes in the premises in their use and occupation, the petitioner hoped that the respondent would, in view of the said order dated 16th April 2007 recording the statement on his behalf, stop using the said premises for purposes other than residential.

8. The petitioner however states that inspite of the said order dated 16th April 2007 recording the statement made by the Counsel/Advocate for the respondent on his behalf, the petitioner continued and continues to use one bed-room on the second floor as his

office and many persons including the respondent's staff, workers, contractors, labour contractors, his customers and others are visiting the respondent in the said office every day including on Sundays.

9. The petitioner further states that inspite of the said order dated 16th April 2007 recording the statement made by the Counsel/Advocate appearing for the respondent, the petitioner continued and continues to allow his wife, Mrs.Sudha Khanna, to conduct tuition classes in the premises in the use and occupation of the respondent and his family and states that a number of boys and girls keep coming and going into the premises through out the day."

4. Mr.Suvarna's contention is that the acts

as enlisted above cause harassment, nuisance and disturbance to the petitioner. The workers, staff and visitors so also the students come to the premises. The subject premises are not used by the respondent for residential purpose but as a regular office.

5. When notice was issued on this petition, affidavit in reply has been filed and in the same in paras 3 and 4, this is what is stated:-

> "3. I carry on business as a Contractor for large turnkey projects through my company known as Inex Interior Pvt.Ltd. which original had its registered office at Shop No.17, Yashodam Shopping Centre, General A.K.Vaidya Marg, Dindoshi, Goregaon (East), Mumbai 400 063. A copy of the certificate of Registration filed with the Registrar of Companies of the abovementioned company

is annexed and marked as Exh."A". The office of Inex Interior Pvt.Ltd. has now been shifted to 39306 Motilal Nagar No.III, Near Azad Maidan, M.G.Road, Goregaon (West), Mumbai 400 062.

4. I personally go to the Goregaon office about two or three times in a week. On other days, I visit the various sites on which I am working. My clients in most cases, consist of corporate entities or reputed architects. There is no question of any of them visiting me, either at my office, or at my residence. It is normally me who has to go to their offices or visit them at site. Under the aforesaid circumstances, there is no question of any clients of mine coming to visit to me at the suit premises. I submit that I do not go to the office every day. From time to time, the office

sends across certain papers for my perusal or my signatures and to that limited extent my staff visits the suit premises. I deny that any workers, contractors or labour contractors visit the suit premises as alleged. I submit that I am using the room in question as my personal study in which I have my personal computer and my library of architectural and interior design books. I am also interested in art, and I have a collection of art which I have stored in the said room. I, therefore, use the said room when I am working alone at home or for my personal work, and for the purpose of my hobbies and other interests. From time to time, if any friend visits me, I might entertain him in the said room. I deny that the room is at all used as an office as alleged by the petitioner."

6. As far as respondent's wife's role is concerned, it has been contended by Mr.Doctor that now the wife no longer conducts tuitions at residence and has once again become employee of the school in which she had been serving and that is how the question of teaching any students or conducting tuitions at the premises does not arise. As far as that aspect of the matter is concerned, Mr.Suvarna does not make any grievance.

7. However, the argument is that despite the so called proof of office being elsewhere, the subject premises are being used as office. Mr.Doctor has pointed out that the petitioner has regular office which he attends for 2/3 days in a week and rest of the days, he is at site. Persons visiting the subject premises come for handing over papers and documents and obtaining signatures thereon. In my view, when this Court

directed that the premises be used as residence and not for any other purpose and when the grievance is that it is being used as office, the material placed is not enough. By oral statement or some stray visits, it cannot be assumed that the premises are not being used by respondent as his residence. Specific denials have been given on affidavit. It is not a case where this court can record evidence about the user, more so, by relying upon the some photograph or otherwise. The contempt petition is not a remedy for the petitioner. The contempt petition is to protect the Majesty of this Court. It is a matter between the contemnor and the court. In such circumstances and when there is nothing to indicate that the premises are not being used as residence but exclusively as an office, the Contempt Petition cannot be entertained. It is accordingly dismissed.

(S.C.DHARMADHIKARI, J)